Popular Government

June 1950

Tar Heel Boys' State Nominating Convention

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Tar Heel Boys' State

The tenth annual Tar Heel Boys' State brought 281 rising seniors to Chapel Hill from high schools all over North Carolina for a week's intensive training in city, county, state, and federal government. In the picture on this month's cover, the "Nationalist" Party nominating convention for state officers is in progress, and the candidates and their campaign managers are putting into practice some of the things they learned in lectures on elections and political parties—plus some political tricks of their own, proving once again that Tar Heel boys have an instinct for politics.

Since its inception in 1939, Tar Heel Boys' State has been conducted each year by the Institute of Government under the sponsorship of the North Carolina Department of the American Legion. Delegates are selected for their outstanding qualities, and are sponsored and sent to Chapel Hill by local American Legion posts and other civic organizations.

During the week the boys were organized into "Nationalist" and "Federalist" political parties, and into cities, counties, and boys' state. They nominated and elected their own city, county, and state officials, following the statutes governing primaries and elections in North Carolina.

Lecturers during the week's program included Albert Coates, Director of the Institute of Government; George Esser, Jr., Assistant Director of the Institute; Dillard Gardner, Marshal and Librarian of the Supreme Court of North Carolina; Dr. E. J. Woodhouse, Professor of Political Science in the University of North Carolina; Henry W. Lewis, Assistant Director of the Institute; Thad Eure, Secretary of State; Dr. Ellen Winston, Commissioner of Public Welfare; W. D. Carmichael, Jr., Controller and Acting President of the University; Walter Anderson, Director of the State Bureau of Investigation; Dr. T. C. Johnson, Commissioner of Paroles; Eugene Shaw, Commissioner of Revenue; Dr. Clyde Erwin, Superintendent of Public Instruction; William Friday, Acting Dean of Students at the University; Dr. J. W. R. Norton, State Health Officer; Henry Brandis, Dean of the University's Law School; George Ross, Director of the State Department of Conservation and Development; L. Y. Ballentine, Commissioner of Agriculture; R. B. House, Chancellor of the University; Dr. Henry Jordan, Chairman of the State Highway and Public Works Commission; Brandon Hodges, State Treasurer; Dr. Archibald Henderson, Kenan Professor Emeritus of the University; State Representative John Umstead, Jr.; Commander R. C. Godwin, Executive Vice-Commander Wiley M. Pickens, and Adjutant Nash McKee of the North Carolina Department of the American Legion; Hugh Q. Alexander of Kannapolis, Chairman of the Boys' State Commission; Judge L. J. Phipps of Chapel Hill; and Charlie Justice, University football star now working with the Medical Foundation. Director of the program was W. M. Cochrane, Assistant Director of the Institute of Government.

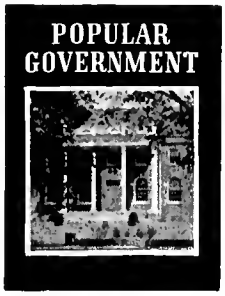
THE CLEARINGHOUSE

Recent Developments of Interest to Counties, Cities and Towns of North Carolina

Ground-Water Survey

The water-shortage problem which is forcing New York to tamper with rain clouds and California to battle with Arizona over supplies for irrigation purposes, is currently being faced head-on in North Carolina in a foresighted effort to forestall possible future emergencies. A concentrated study of below-surface water conditions is being made in the Piedmont area by means of a cooperative effort on the part of both the state and the geological survey division of the Department of Interior, with the costs being shared equally. According to the U. S. Army Engineers, if the Piedmont area continues to grow industrially, as it gives every indication of doing, the new business and increased population could bring an increased consumption of water that might conceivably block continued growth in the future. And, according to H. E. LeGrand, Federal geologist working on the survey, there is an enormous amount of water in ground storage in the Piedmont area—the main problem being that the amount available for withdrawal at any one place is limited. Consequently it is hoped that the present study will lead to a more advantageous use of the available ground water. Counties undergoing the survey include Guilford, Forsyth, Caswell, Rockingham and Stokes.

The water problem was dramatized for North Carolina recently when in Elm City three deep wells, which had furnished the town with more than 2,000,000 gallons of water each month, went dry with mysterious suddenness. Declaring an emergency, baffled town officials immediately sent for a waterworks engineer to determine the causes of the drought, and passed an ordinance which read: "It shall be unlawful for any person or persons to use unnecessary, or waste, water during the state of emergency." Local police watched for violators, who were subject to fines of $10 for the first offense, $15 for the second offense, and $25 for the third offense. Meanwhile aid was forthcoming to the small community from several sources. Two water tank trucks were obtained from Fourth Highway Division headquarters, and Raleigh city officials sent a sprayer, to help carry 15,000 gallons of water from Rocky Mount each day. The Atlantic Coast Line Railroad sent two tank cars filled with water unsuitable for drinking, for fire fighting purposes, and Elm City's neighbor, the town of Wilson sent its fire truck to help pump the borrowed water into the local fire hydrants. Wilson officials also notified Elm City that their town fire departments stood ready 24 hours each day to furnish fire protection to the little community.



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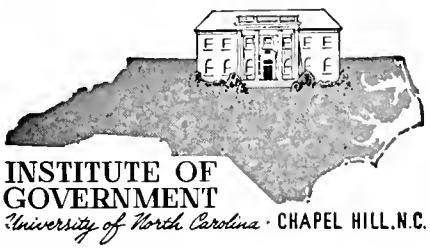

Personnel Manual

A 65-page manual describing Winston-Salem's government and personnel program was released last month by the city manager to the mayor, the board of aldermen, city department heads, and to 1200 municipal employees. The manual, prepared by the Personnel Department with the cooperation of the other departments, was accompanied by a memorandum from the city manager outlining the purposes which lay behind its preparation. According to the memorandum the pamphlet was designed to aid five groups: 1) The mayor and board of aldermen—as a source of information on policies in effect and on the organization of the various city departments; 2) The city manager—in reviewing the numbers and classifications of employees engaged in all activities, and in delegating authority and responsibility within departments; 3) The department heads and their employees—as an operating manual, and as a reference on the actual organizational structure of other departments; 4) Civics teachers and students in the city schools; 5) Local organizations interested in the city government such as the Chambers of Commerce, League of Women Voters, the Committee of One Hundred, and others.

The manual will serve these groups by providing a directory of city offi-

cials, and a detailed description of all personnel procedures as they affect each department, including the classification plan and allocation of positions, retirement plan, pay plan, and policies concerning working hours, holidays, leaves of absences, grievances, resignations, etc. Approximately 26 pages are devoted to organization charts showing the structure, personnel, and line of responsibility in each of the city's departments, agencies and enterprises. In addition, there is an especially valuable index at the back of the manual.

Fire Protection

The rash of damaging forest fires which, encouraged by the spring dry spell, recently broke out in almost every part of the state, only served to heighten the concern of most local officials over the problem of fire protection for rural areas. Plans to meet the problems were reported underway in two counties last month.

Delegations from small communities in Wake conferred with the county commissioners at their regular monthly meeting and outlined a recommendation that the board create a county-wide fire fighting system. The proposal called for the establishment of volunteer fire departments in small towns throughout the county, and the appointment of a "county fire chief" who would organize and coordinate the volunteer units as well as supervise the training of the firemen. The initial cost of the system, which would be borne by the county, was estimated at between $50,000 and $60,000. At present the state and the county each provide $3,000 for rural fire fighting in Wake.

Cumberland county commissioners called a public meeting on May 15 to explain two proposed solutions to the problem of rural fire protection. The proposals were formulated and presented to the commissioners for study by a special committee of the board following an announcement by Fayetteville city officials that the city fire department would answer no out-of-town calls after June 30. The two plans outlined by the commissioners at the public meeting included:

1. An arrangement with the city fire department to afford protection to an area within a three and a half mile radius of the city limits, with residents of this area bearing a greater share proportionately, of the tax levy for fire protection.

2. Division of the county into four or five districts, with the commissioners empowered to call a vote in each district on whether or not to levy a special district tax for fire protection.

A novel but evidently successful method of providing local fire protection in a small community was recently revealed by the town of Spencer in West Virginia. Taking advantage of the natural inclination of young boys where fire engines are concerned the town council a few years ago decided to appoint a group from the local high school as the official fire department. Previously whenever the siren sounded a policeman jumped to the wheel of the town's truck and persons nearest the fire house at the time got aboard to man the pumps and hose—a system which proved far from efficient. Under the new plan a permanent force of about twenty high school boys, thoroughly trained by a high school teacher, stands ready to answer all calls. Selected freshmen chosen on a competitive basis replace graduating seniors each year. During the past few years the schoolboy fire brigade has been credited with controlling at least four major fires and a number of smaller ones.

Public Relations

Durham's city council opened its purse strings this month to provide financial backing for an ordinance adopted last November. The council voted to appropriate $2,500 towards the creation and first few months of operation of a city department of public relations. Chief objectives of the new department will be to promote "the resoures and natural advantages of the City of Durham" for the purpose of attracting new industries to the area, and to foster better relations with the industries already in the city. The initial appropriation was based on an annual budget of $15,000 drafted for the department by a special joint city council-Chamber of Commerce committee. This budget calls for a salary of $6,000 for the director (who will be appointed by and responsible to the city manager), $2,000 for secretarial assistance, $1,500 for rent, $500 for office expenses, $1,500 for travel, $3,000 for advertising, and $500 for telephone and telegraph service.

Smoke Control

Pittsburgh, the city which was once referred to unkindly as the nation's smudgepot, has finally emerged victorious from an eight-year battle with smoke, according to a recent announcement by the city's smoke prevention bureau. Data obtained with the help of the U. S. Weather Bureau showed that the bureau's work since it began its operation in 1942, has produced the following results: 1) The city's atmosphere has become 65 per cent more free of impurities, 2) Smog has been completely eliminated, 3) Visibility conditions for aircraft has improved 75 per cent, 4) Reduction in atmospheric dust is increasing at a rapid rate. A further result according to letters to the bureau from housewives is that white curtains are making a comeback within the city.

The bureau's initial research eight years ago revealed that Pittsburgh's sunlight was being blotted out by 122,613 exhaust outlets, including mill stacks and home chimneys, which annually spewed forth the residue of 6,250,000 tons of soft coal. But through experiment the bureau found that with more complete combustion, smoke could be eliminated without eliminating the use of coal. Either the proper sort of automatic furnace equipment had to be used in order to insure proper combustion, or the fuel had to be non-volatile, such as mixtures of soft and hard coal. Accordingly the city council passed ordinances providing that all heating equipment had to be of the smokeless type and approved by the bureau, and that in hand fired furnaces only smokeless fuels such as coke mixtures, coke, gas, etc. could be used. Twelve inspectors were hired to keep watch for telltale smoke and to issue warnings or summonses to offending property owners. During 1949 4,272 furnaces were inspected and 562 found to be in need of repair. Five were sealed. Sixteen individuals were taken to court because of faulty furnace operations, and 67 were given warnings.

With adequate legal restrictions in operation and regular inspections being carried out methodically, the bureau is now placing its greatest emphasis on education of property owners to insure their complete cooperation in making Pittsburgh a cleaner city.

Similar success in reducing air pollution was reported this month by Philadelphia's Bureau of Municipal Research. Philadelphia's "Air Pollution

Control Ordinance of 1948" was aimed primarily at the abatement of locomotive smoke, the major cause of impurities in the city's atmosphere. The ordinance, administered by the Division of Air Pollution Control: 1) prohibits the emission from locomotives of "smoke of a shade greater than No. 2 of the Ringleman Chart (a U. S. Bureau of Mines' standard of smoke density) for more than one minute at any one time" or "for more than three such one-minute periods in any fifteen minutes;" 2) prohibits the emission from roundhouses" of smoke of a density greater than No. 3 of the Ringleman Chart for a period of more than six minutes in one hour;" 3) requires that locomotives be equipped with "approved devices" for keeping smoke within the allowed limits. The Division encouraged the railroads to install smoke-elimination devices, to use low volatile coal, and to replace coal burning engines with Diesel or electric engines. The railroads proved responsive and as a result during the year and a half since adoption of the ordinance locomotive smoke is reported to have been reduced by about 60 per cent. To date the ordinance's penalty provision—$10 to $100 fine or up to 30 days' imprisonment for each offense—has never been invoked.

Sanitation Study

Winston-Salem's Sanitation Improvement Committee organized last month to survey the city's sanitation and housing needs recently made its first group of recommendations to the board of aldermen (see Popular Government, May 1950). The committee's major recommendation was that the city adopt a housing code requiring that all dwelling units be provided with at least a minimum of sanitary facilities, including one tank type flush toilet, a kitchen sink and at least one water tap, with enforcement of the code made flexible "to the extent that a property owner will not be forced to comply with the provisions of the ordinance until directed to do so by the inspectors." The proposed code would also require that "all houses be made structurally sound and weather tight," that they be screened against insects, wired for electricity, that chimneys and flues meet minimum fire standards, that all houses have adequate light and air, and that property owners be required "to demolish any dwelling unit that is not brought up to this established minimum standard and maintained in that condition." As a program for the city's immediate action the committee recommended expansion of garbage collection services, the cleaning of local streams and stream banks, operations to prevent the breeding of insects in stream beds, and extension of city water and sewer services. The cost of carrying out the immediate clean-up program was estimated by the committee at $24,079.60.

Zoning Ordinance

Unanimous adoption by the Kinston city council this month of a detailed zoning ordinance marked the successful end of more than two years work and study by city officials to assure that the city's future growth would follow the most desirable direction. Before the vote was taken the 17 page closely printed ordinance was read in its entirety to the council by members of the City Planning Commission, who also submitted for approval a map showing the areas which will be set aside within the city for business, industries and residences. The ordinance provides for a five-member Board of Adjustment which will hear appeals from property owners on all zoning matters. Kinston's action means that at present almost every large North Carolina town has enacted a zoning ordinance. According to the Municipal Yearbook, in 1949 Kinston and one other city were the only cities of over 10,000 in the state lacking such an ordinance.

Meter Repair School

Representatives from thirty-six North Carolina cities and towns came together in Winston-Salem last month to attend the first meter repair school to be held in the State. The sixty-nine members of the various municipal water works departments heard experts describe the procedures involved in installing, reading, and repairing water meters, as well as billing, collecting, and handling of complaints from consumers. J. L. Greenlee, assistant superintendent of Charlotte's Water Department and chairman of the school committee of the N. C. Section of the American Water Works Association which conducted the school, has announed that it is the intention of the committee to make the meter repair school an annual affair.

Garbage Disposal

Both the city and county of Durham are considering the adoption of the land fill method of garbage disposal in place of the present procedure of disposal through incinerators. Capacity of the city's incinerators is currently inadequate for the city alone, and notice was sent to the county last month that the city could no longer accept garbage from the county. Representatives from both units were scheduled to go to Charlotte to observe the two land fill units in operation there. In describing the advantages of the land fill method, Durham's city manager, R. W. Flack, stated that it was cheaper and more sanitary than incineration, and that by using the method eroded land could be reclaimed and used for productive purposes.

A Wilson ordinance which went into effect on May 1 was designed to keep the business district cleaner by providing for daily collection of garbage from behind stores and office buildings. In addition "No merchant or any other person shall sweep or cause to be swept any litter, trash, paper or any sweepings from any store or building out the front door or back door of said building, but same shall be swept to the back of the store and placed in a receptacle. . ."

With the approach of summer, municipal sanitation departments throughout the country are once more preparing to do battle with an old enemy, the fly. Two small cities, Tuscumbia, Alabama and Russell, Kansas have adopted what has proved to be a quick and easy method of eliminating flies at their most common breeding places, garbage cans and garbage dumps. Both cities have attached tanks and spray guns to their garbage trucks and it has become part of the routine of the garbage collectors to spray the cans after they are emptied into the truck, to spray the trucks at regular intervals, and, in passing, to stop and spray any suspiciously damp and unkept places along the road. Officials in Tuscumbia and Russell have found that the procedure, while no substitute for a city-wide anti-insect campaign, has succeeded in drastically cutting the number of flies at very little expense either of time or money.

First In Road Mileage

This year, when the highway construction budgets of the 48 states reached a record high of $1,446,732,000 —(15% larger than the total for 1949)—North Carolina succeeded in jumping from sixth to third place in the nation in size of expenditure for highways, according to a report by the American Road Builders' Association. The state's budget for road construction this year is $75,000,000 as compared to $42,579,000 last year. A striking fact reported by ARBA is that while ranking third in size of expenditures, North Carolina is now in first place in total highway mileage scheduled for construction in 1950, with 6,435. Ohio, in second place, is far behind with only 3,975 miles scheduled for this year. Total highway mileage to be built by the 48 states this year amounts to 46,676, approximately 4,000 more than in 1949.

Interstate Crime

A senate investigation of interstate crime was assured this month when the upper house voted 69 to 1 to appropriate $150,000 for such a study. The investigation will be carried on by a special committee, probably headed by Senator Estes Kefauver of Tennessee and composed of two Democrats and two Republicans chosen by Vice President Barkley from the Judiciary and Commerce Committees. The group will report to the Senate next February 28.

Progress

Evidence that civilization is advancing at a rapid clip was clearly given this month when Mayor Marshall Kurfees of Winston-Salem went on the air to discuss a new ordinance the city was preparing. Members of the radio audience who perhaps could remember back to the days when boards of aldermen were voting cattle off the streets of what are now major cities, were brought up with something of a jolt when the mayor announced that Winston-Salem's newest ordinance would govern the erection, location and installation of television aerials.

The Minutes Tell The Story

City governing boards strayed from the routine this month, according to minutes received by the Institute of Government, just enough to adopt a number of ordinances covering a broad range of variety.

Wilson's "Pool Room Ordinance" requires all poolrooms, bowling alleys and shooting galleries to close promptly at midnight; makes it illegal for any person to obstruct the view from without or paint or deface the windows of such places of amusement; and makes it illegal for the proprietor of a poolroom or shooting gallery to permit persons under 18 to loiter or play games on the premises. Violators are subject to a $25 fine.

Fayetteville's council took two steps this month to make the city cleaner and more attractive. One ordinance outlaws the keeping of hogs within the city limits after January 1, 1951, with the police empowered to remove, at the expense of the owners, any hog pens remaining after that date. Similarly coming under prohibition were advertising signs, on any of the city's streets, which are not attached to buildings abutting the street. Offending signs which remain after July 1 will be removed at the expense of the owner, who will also be subject to a $50 fine.

Reports have been carried recently in many of the state newspapers of housewives who have been harrassed by persons claiming to be selling magazine subscriptions on behalf of certain worthy organizations, who in many cases use unwarrantedly high-pressure sales methods to sell their subscriptions. The subscriptions sold by these foot-in-the-door salesmen frequently turn out to be fraudulent, the housewife waiting in vain for the magazines to arrive. New Bern's city council met the problem this month by adopting a brief but comprehensive ordinance: "No person, firm or corporation shall sell, solicit or cause to sell or solicit upon the sidewalks, streets or door-to-door in the city of New Bern any subscriptions of magazines, periodicals or newspapers." Offenders may face a $50 fine or 30 days in jail.

Sanford, one of at least five cities which adopted new parking and traffic regulations this month, ordered that all automobiles found on certain streets between midnight and six a.m. be towed to the town hall, at—naturally—the owners' expense.

Six cities either amended, considered amending, or called public hearings on proposals to amend, their zoning ordinances. Major miscellaneous activities of the city councils included:

Greensboro's amendment of the city code to provide for a $5 tax on the operation of private nursing homes.

Hamlet's decision to ask the county commissioners to contribute $2500 annually towards the upkeep of the town fire department. In return Hamlet offered to answer all outside fire calls within a radius of six miles, charging $100 to each rural property owner whose call is answered.

Edenton's consideration of a comprehensive program to improve the operation of the town government during 1950. The proposed program, which will come up for a final vote at the next council meeting includes: 1) a pension fund for city employees, 2) revision of the town registration books, 3) modernization of budget procedure, 4) an annual pay-as-you-go paving project, and 5) establishment of a three-member Police Commission to supervise the police department and to which the police department would be solely responsible.

* * * * *

County commissioners, most of whom faced contests in the May 27 primaries, carried on business as usual this month, approving road petitions, drawing jury lists, hearing reports of county officials, and in some cases refunding taxes.

In Washington the board approved a contract with a commercial firm for the auditing of the county's books. Dare commissioners, acting under the provisions of a local act passed by the 1949 Legislature which legalized Bingo at Nags Head, granted two licenses at $500 each to operate the game. The licenses may be revoked if the prizes awarded consist of cash payments or if the games are conducted in an indecorous atmosphere.

Pitt's county attorney reported a ruling by the Attorney General to the board which provided that license taxes paid to the county by beer parlor proprietors need not be refunded when the licenses are revoked by the State ABC board. Overestimating perhaps the daring of local burglars Pitt also purchased burglary insurance on the county vault—located in the sheriff's office.

Mayor Dan K. Edwards Writes Of His First Year In Office

By
DANIEL K. EDWARDS
Mayor
City of Durham

Writing about "The Shame of the Cities" in 1904, Lincoln Steffens said that "The misgovernment of the American people is misgovernment *by* the American people." And in 1949, Arthur Kirkman, serving with me in the General Assembly of North Carolina, loaned me a book called *Our Fair City* edited by Robert S. Allen (I still have it, Arthur) which developed that same theme by dissecting the brain, heart, and alimentary canal of seventeen cities of these United States scattered from Boston to Los Angeles. A few weeks later I was elected Mayor of the City of Durham and it was too late for books. I was suddenly aware of a latent fallacy in Steffens' pat phrase; misgovernment *could* result by reason of a well intentioned electorate leaning on a broken reed—to wit, me.

One year later projects have not yet fructified, courses have not yet all been set, facts have not all been gathered and policies are still in the process of jelling. This, then, is a strange document violative of every warning of all the ancient adages and parables about such things as being in the middle of a stream, setting one's hand to the plow, and the folly of Lot and Orpheus. It is being written for two reasons—first, the request of Albert Coates, and second, an egotistical urge to authorship that has plagued me since high school days. I confess to all the emotions that must be felt by a tenant of "death row" when consigning his body to a medical school. My solace is that the reader is not interested in me as a person except insofar as I provide a worms-eye view of municipal government, and that being true, I can be as objective as my ego will permit and as frank as I think my constituents will allow.

The Nature of City Government

Let us reflect a moment on the nature of city government. We have come to regard it ideally as a potentially powerful force—deriving its power from the will of the people—capable of furnishing services of a restricted character to the people of a community. A city government is, of course, not the only agency influencing the conduct of citizens or supplying services to those citizens. There is private enterprise furnishing things such as food on the grocery store shelf and individual medical care. There are the volunteer agencies and associations such as the Chamber of Commerce, the Community Chest, labor unions, and civic clubs. Then there are the long arms of state and federal government reaching into the community not only through the courts of the land but also through a multitude of agencies and regulations that appear to have only local application. But city government is the agency that could and should be used to provide all governmental services and regulations of a distinctly local nature. So used it could be a great force for the betterment of the lot of man and a means whereby he could exercise the greatest control over his own affairs. How then is it confined and with what is it bound?

Every city has a distinctive personality which is a derivative of its heredity and its environment in much the same manner as the personality of an individual. This personality is reflected in the character of the city government in greater or less degree depending upon the successfulness of politics in reflecting the will of the whole community. If the government of a city is a true portrait of the people of the community and their aspirations and ideals, we can have no quarrel with it; if we do not like the picture thus presented, our quarrel is with the inhabitants of the community themselves.

Politics and the City

The failure of politics and city government to solve problems and adopt policies in accord with the best interests and desires of the citizenry in numerous times and places has been the subject of volumes of commentaries. Politics has failed in its job for many reasons, ranging from the lack of acumen and conscientiousness on the part of elected leaders, to misinformation given to the people, and restrictions imposed by superior governmental bodies. Archaic and inefficient forms of government embodied in city charters, overlapping and wasteful functions of government as between local governments having concurrent jurisdiction, as well as what has been called "the dead hand of hostile and benighted state legislatures" have all operated to thwart the will of the people even when the metabolism of politics has produced office holders of good will and reasonable competence.

It is elementary that out of the caldron of politics is evolved the policies of and the personalities in government. Since in large communities the town meeting has become impractical as a means of government, more emphasis has been placed on the representative method, which means that personalities are more and more significant. By and large a representative on any city council is elected because he is a likeable fellow and, perhaps, because of certain economic and sociological predilections that he may have. In the City of Durham, we have such a system of government—that is to say, we have a City Council composed of twelve councilmen and a mayor. The City Charter which was enacted by the General Assembly some years ago sets up this government and provides for the election of these members. This document states that such elections shall be non-partisan. All that means of course is that when the voter goes to the polls to vote he is not presented with a ticket bearing the name "Democratic" and another ticket bearing the name "Republican." This implies, of course that national parties and their platforms have little in them that is directly pertinent to what happens government-wise in the City of Durham.

Durham's "Political Parties"

But since the life blood of government in a representative democracy is politics, and politics inevitably breeds political parties, such parties invari-

ably form. There are a number of political parties in Durham. Not only the well-known Democratic party and the almost as well-known Republican party, but other less formal parties which actually produce candidates in the municipal elections and in the Democratic party primaries. When I speak of a political party, I, of course, mean a group of individuals who associate themselves together for the purpose of by some means agreeing on their own candidate or on their own platform prior to a popular election with the thought of providing united support for that candidate or platform in the election.

In Durham we have a Labor party, a Negro party, and a Tory party. There are other groups and organizations which from time to time endorse or support particular candidates or points of view in elections, but since those organizations are not primarily devoted to the selection and election of political candidates, they are not properly deemed political parties. There is to date no veterans' party, no white-collar party, no consumers' party. Those who do not belong to any of the politically active groups do not bring out any candidates of their own, but are relegated to the necessity of choosing between candidates either brought out by a party or who through some turbulence of their own soul have cast their hats in the political ring and sallied forth to beat the bushes for votes. The very existence of this latter group of voters—inarticulate and silent prior to ballot casting time—does, however, serve as fuel to kindle the flame of political ambition in the breast of some aspirants who cannot find anyone in particular to summons them to candidacy.

While Durham's current political pattern has not received universal smiles of approval from editorial writers or from defeated candidates, it is still, I think, demonstrably superior to many another system, such as the political boss rule of a Memphis or the newspaper monopoly rule based on a facade of ultra-respectability that has been charged to Kansas City. After all, it is difficult for the impartial observer to see any great malevolence lurking in these pre-election assemblies, whether they be in union halls, downtown offices, or smoke-filled backrooms, so long as the general public is aware of the motives of the various groups and what their candidates and the candidates who might incidentally be endorsed by any of them stand for.

Tories

In general the Tories are advocates of cheap government based pretty largely on that theory of rugged individualism which admonishes a man to so strive as to acquire a large yard if he would have a place in which his children might play. They acknowledge only a bare subsistence as that to which a member of the community or his family is by right entitled, save by his own efforts he acquire more. They assert that ample opportunity exists in private enterprise for everyone to earn the good things of life, particularly if that enterprise is freed from the burden of public taxes.

Labor

Labor, on the other hand, while by no means shuddering at a higher tax rate on real property, supports among other things expanded recreational programs and facilities municipally financed, better public school education, public low-rent housing, and continuation of rent control, a power that has recently come within the municipal purview. It so happens that at the present time these ideas have considerable appeal to white-collar workers, teachers, college professors, doctors, and the like, whose names are legion in this community. Whether these folk would in any degree collaborate with the struggle for power in Washington that labor is making on the national level, most of them can see eye to eye with labor on many such local issues.

Negroes

The Negro party is much more closely knit and inspired by fierce loyalty to the group than is any other party in Durham. This is probably because they are not bound together in an economic enterprise, but rather in a spiritual crusade that transcends the varying economic interest of the elements of their group. For it is true that in the Negro party, the wealthy man, the member of the Labor union, the poor man, the landlord and the tenant all make common cause with a singularly united front. This, of course, is no place to attempt to state a solution to the problem of the Negro, even if I were capable of so doing, but no fair-minded observer would assert that the problem does not exist nor deny that there is an unearned stigma which has been applied to the Negro that is altogether apart from the mere custom of segregation. It is the effort to alleviate and erase this stigma and to achieve for the Negro a greater measure of human dignity and respect in the community that seems to be near to the hearts of all members of this group. That is why to them the recognition of ability of Negroes ranks with purely economic matters, such as improving housing conditions in the Negro sections of the city. That is why the able executives of the great Negro insurance company and bank, the members of the fine Negro college, Negro professional men and Negro labor stand together. And it is thought that about one-third of the population of Durham is Negro.

Influence of "Big Business"

Writings about American cities and particularly about those located in the South, frequently contain references to the somewhat obscure but allegedly sinister influence of "big business" on municipal destiny. It is obvious that wealthy individuals and corporations can exercise influence in our politics in many ways, among which is their ability to hire and enlist in their cause some of the best intellectual ability and the most magnetic personalities in any given community. The cynic would say that is the reason for the young liberal becoming the middle-aged conservative —although those not so fortunate as to be purchased might remain in the liberal camp throughout life. However that may be, in studies of certain Southern cities at least, more attention has been paid to the effect of "economic satrapies" wherein absentee owners of local industries and businesses wield a disastrous hand in the affairs of the locality in which such industries and businesses are located.

Those who point with alarm in these discussions usually point in the direction of Birmingham and some similarly situated cities. While it is true that Durham's largest industries operating under the names of American Tobacco Company and Liggett & Myers Tobacco Company are owned by stockholders and controlled by officers and directors who do not live within our city, no dire consequences or infringement upon our liberties have resulted. There are several reasons for this. In the first place, a careful analysis of the situations in which large industries have tended to suppress particular communities wherein a part of their enterprises is located indicates that the pattern followed is to restrict one part of a financial or industrial empire in order to derive some exceptional benefits from the prosperity

of other segments of that empire. That is not true here. Moreover, Durham has large textile industries in considerable measure owned and controlld by local citizens, and enjoys the benefits of many smaller industries and businesses for the most part locally owned. Then, of course, one need only mention Duke University which ranks about third as an employer and money-spender here. As far as I have been able to observe, the rulers of the tobacco industries have not undertaken even remotely to participate in municipal government and seem generally content to rest upon the proposition that nearly all members of the community are possessed of an urgent desire to maintain the health of these industries and to make this community as attractive as possible for their expansion within our boundaries.

Legislative Control over Cities

Politics even at its best, however, is not permitted free play in the American political scene to define the path upon which the people of a city would desire their community to move. We need not concern ourselves here with the Federal Constitution and statutes, as real as the influence of those might be. The thing that has concerned many political thinkers is the habit of state legislatures of restricting and circumambienting what might be the will of the government of localities in establishing policies of apparent local nature. One of the primary efforts of the North Carolina League of Municipalities is to persuade the North Carolina General Assembly to relieve that condition in this state by appropriate general statutes. We are not concerned particularly with the form of laws but rather with the reasons that lie behind those laws. A cumbersome and awkward statute may be readily revised and streamlined by any general assembly of the state, but the causes of state restriction and control cannot be cured by an artful legislative pen.

Robert Allen has charged most State interference with municipal affairs to the sinister purposes of either financial or political interests which can capitalize on the suspicious hostility, or at least indifference, of legislatures dominated by rural representatives toward cities. Whatever may be the situation in other states, I am confident that this is not the whole picture in North Carolina, although I am sometimes led to believe that it does have some measure of application even here. I have discussed in another article published sometime ago in this magazine the forces which I could discern leading toward governmental centralization in this state. The most perplexing of these causes are fiscal in their nature and arise in large measure from the economic geography of North Carolina which causes the poorer sections of the state to turn to state government and ultimately to revenue sources in the wealthier localities—to provide themselves with essential services, such as schools and roads. It cannot be decided justly that all of these causes are evil or that the effort to meet the needs of the poorer sections of the state is undesirable, for while it is recognized that home rule promotes democracy and may bring a larger measure of the good things of life to those who live in prosperous communities, nevertheless cities cannot be said to be the sole property of the people living within their corporate boundaries; they are in a very real sense a part of the whole state and belong to the people of the state. Nevertheless, it is true that in the march of events, the cities have been neglected and unduly burdened above and beyond the call of necessity, and in their efforts to provide state-wide services to all the people, general assemblies have not paid adequate heed to the welfare and prosperity of the cities from which they derive so much of the state's revenue.

Proposed Legislative Action

While the ultimate hope of North Carolina cities for some measure of autonomy and home rule depends upon the economic development of some presently under-developed areas of the state, there are a number of things that can and should be done by the next General Assembly to improve the lot of our municipalities. The program of the North Carolina League of Municipalities contains many of these matters, including a more equitable distribution of the tax on gasoline, particularly that portion of the tax paid on gasoline burned while using city streets.

Slum Clearance

In addition to those specific matters, Durham's experience in two other fields indicates the need for general legislative attention. For many years, the housing situation in the City of Durham has been deplorable. The living quarters of the lower income groups have been dilapidated, crowded, and unsanitary, breeding disease of mind and body in the inhabitants. It was only during this past year that the City Council adopted ordinances tending toward the improvement of housing conditions, and approved the establishment of a Housing Authority for the City of Durham. The Housing Authority under the state and Federal law represents one means whereby the citizens of this municipality may in some measure enjoy the benefits of wealth produced here and paid by way of taxes to higher echelons of government, and enables them to do so without giving up local control. The last General Assembly failed to pass an enabling act to permit the localities of this state to participate in the national slum clearance program. It is a matter of primary concern that the next General Assembly does not fail to pass such legislation promptly. It is perfectly apparent that the lobbies fighting the enactment of such laws by the State Legislature are endeavoring to use the state governing body as a means to prohibit municipalities from making their own decisions as to whether to participate in such programs.

Utilities

In another field a state law has been used to lift the power of decision from the municipalities. Sometime ago the writer of this article and the City Attorney of Durham appeared before the North Carolina Utilities Commission protesting the proposal of the Duke Power Company to raise the transportation charges on its buses within the City. The contentions of the City did not prevail, for in these matters the Public Utilities Commission is, under state law, empowered not only to regulate and restrict the public utilities companies, but to regulate and restrict the cities of North Carolina themselves. It is submitted that the governing body of a city should not be overruled in a matter of purely local implications, such as the fixing of fares to be charged on buses traversing city streets, and having no inter-urban routes. The same thing is true in the field of taxing these utilities. If anywhere, it is in this field that financial powers have resorted to the state general assemblies in North Carolina to coerce the cities.

Already I have been much more long-winded than I had any thought of being when I started writing and I have omitted the bare mention of many vital and interesting problems that exist in Durham and other cities of this area. I have not dwelt upon such things as the mounting problem

of sanitation and sewage disposal, the dilemmas created by the heavily populated fringe areas just outside the city borders, the fascinating possibilities of improved governmental efficiency by consolidating some functions, at least, of city and county government, or the general management of city affairs under the management form of government which we have here. The tools to solve these problems, however, are even now within the grasp of the locality and it depends only on study, planning, and the wisdom of all concerned, including government officials and the citizens of the community, to find and put in effect satisfying answers. The gathering of information in the making of plans requires both time and money and seemingly must proceed at a walk.

It would be in keeping with tradition to end this dissertation on an exalted note. This is impossible both because I find myself in the middle of a fluid situation and because the nature of city government has much about it characteristic of the job of a housewife—that is to say, cleaning, sweeping and looking after the children. Under the circumstances, any exaltation would be ersatz.

Our State Tax Structure In North Carolina

By
EUGENE SHAW
Commissioner of Revenue
State of North Carolina

Taxation is nothing new in human experience. As long as we have had government we have also had taxation. These two inseparable companions have been walking together hand in hand across the pages of history a long, long time. They are so closely interwoven one with the other that their separation is impossible. They are like the fabric of a cloth woven together with the long continuous strands commonly called the warp representing the services, functions, duties, and responsibilities of a government to its citizens, and with the short or cross threads commonly called the woof representing the contributions in the form of taxes by the citizen to the support of his government. Each is necessary to hold the cloth together. In other words, government without taxation is impossible, and indeed, taxation without government would be quite unnecessary.

Just as government has been the principal topic of history, so has taxation played an important part in shaping this history. American history followed a different course after December 16, 1773 when forty or fifty indignant patriots disguised as Mohawk Indians clambered aboard three British ships anchored in Boston harbor and dumped overboard 342 chests of the iniquitous tea. Beginning with that event the cry spread near and far that "Taxation without representation is tyranny" and within a short time there was written a Declaration of Independence, and there was successfully waged a war of independence.

Representation, Justice, and Equality

When Thomas Jefferson posed the question "Is it safe to make the governing power when once seated in office, independent in its revenue?" he and his colleagues resolved that the power to tax should never be the power to destroy this nation unless the people through their direct representatives permitted such an event to take place. They were so convinced that the taxing power should be the exclusive function of the legislative branch that they wrote it into the basic law of the land. And so they built their bridge upon three piers: Taxation at one end, Representation in the middle and Government at the other end.

The Judicial branch, with its exclusive function of final interpretation of the law, which in respect to taxation sometimes means the final determination of the legality of a levy or the liability of a taxpayer, has traditionally built its bridge upon three piers: Taxation at one end, Justice in the middle and Enforcement at the other end.

The Executive branch, charged with that duty of enforcement and acting through tax administrators, can find no higher purpose than efficiency through equality and so we build our bridge upon three piers: Taxation at one end, Equality in the middle and Collection at the other end.

Thus the policy of taxation is through representation, the principle of interpretation is justice, and the purpose of enforcement is equality.

Taxation in North Carolina

But what about taxation in North Carolina? Our present state constitution, written in 1868, contains similar provisions to the Federal constitution so that state taxes in North Carolina may only be levied by the 120 members of our House of Representatives and the 50 members of our state Senate. With them rests the sole authority, duty and responsibility with respect to the policy of taxation. As citizens we rightfully may ask the question: How carefully has our state tax structure been designed, and how well has it been built? If we may for the purpose of illustration use the analogy of a building in studying our tax structure, let us first examine its architecture. The study of the architecture of any building almost invariably requires a parallel study of the history of the times during which the building was built. Our present state tax structure was designed and built during that period commencing shortly after the end of World War I and extending to a time shortly

prior to our entry into World War II—sometimes called the Aspirin Age, perhaps because it might well denote the period of the prohibition hangover, the depression jitters, and the specter of World War II—when the American people were undergoing one change after another with the headaches that accompany them. At any rate, we do know that during that period, industry was revolutionized with the discovery and development of nylon, rayon, plastics and electronics. In the field of medicine the discovery of the wonder drugs, such as sulfa, penicillin, and streptomycin, not to mention vitamins and other health discoveries, completely revolutionized the treatment and cure of various serious infections. The railroad monopoly on land transportation yielded a large measure of its passenger, freight and mail business to buses, trucks, automobiles and planes. Communication by mail and telegraph gave way to radio and television, aided by the development of the coaxial cable. It was during the period of time when these revolutionary changes in industry, science, transportation and communication were taking place that our state tax structure was designed and built.

Inheritance, License, and Franchise Taxes

In 1919, using a building as an analogy, we had three small buildings in our revenue community. The first of these was an old brick structure built originally about 1847, remodeled about 1901, modernized in 1913, but which nevertheless remained a small and unimportant edifice. It was known as Schedule A or State Inheritance Tax and it was kept and maintained by the State Treasurer. The next building in the revenue community was a sprawling frame structure known as Schedule B or License Tax, which was not very well maintained, because it was dependent upon the cooperation of the county sheriffs and local tax collectors threughout the state to keep it in condition. The most solid structure in the group was a stone building known as Schedule C or Franchise Tax, which was kept and maintained by a state organization known as the Tax Commission, which had been created about the time this structure was built in 1899.

By the end of World War I, the growth of North Carolina had required the Tax Commission, later known as the Corporation Commission, to extend its functions and services far beyond that of a revenue body, and it had become both a revenue and a regulatory body, with the result that the superintendent of this building known as 'franchise' had many other duties to perform which diverted some attention from the maintenance of the building.

Tax Structure Remodeled in 1921

At the general election in 1920, the people of North Carolina went to the polls and by majority vote ratified the amendment to the Constitution of North Carolina giving the General Assembly the power to levy an income tax. At the following session of the General Assembly, held in 1921, our first income tax law was enacted, and it was at that time that the General Assembly, as builders of the revenue structure in North Carolina, began to look around and make some plans for a permanent building. Instead of building another building to be known as Schedule D or Income Tax, they decided to tear down all the buildings in this revenue community and to build a consolidated house. Accordingly, there was erected an entirely new edifice of different design. The first floor was partitioned into two rooms, one of which was corporate income taxes and the other individual income taxes. On the second floor there were three rooms, a very small room denoting inheritance taxes, a medium room representing license taxes, and a fairly large room signifying franchise tax. And so it appeared in 1921 that the General Assembly had designed and built a revenue structure that carried a proper balance of weight as between the individual and the corporation, the individual being taxed on inheritance and income; the corporation being taxed on franchise and income, and with license taxes applying to both classes, depending on the business engaged in.

Revenue Administration Centralized

With this new building completed for the time being, the next question was that of maintenance. Accordingly, that same General Assembly in 1921 carefully studied the matter and considered organization plans in the two states which at that time had centralized revenue administrations. In New York, they found a Tax Commission composed of a Chairman with three members, and in Massachusetts, they found a Tax Commission upon whom all the authority and responsibility rested. They decided to follow the Massachusetts plan, and accordingly, created the office of Commissioner of Revenue and made him custodian of our revenue structure. There was no material change in the design or maintenance of our revenue structure until 1929, at which time the Legislature created the Advisory Budget Commission to advise with the Governor as Director of the Budget. Its membership consists of four *ex officio* members composed of the chairmen of the House and Senate Finance and Appropriations Committees and two other members appointed by the Governor. It is interesting to observe that the membership on this commission is divided between the executive and legislative branches of our state government, but the majority comes from the legislative branch, thus continuing to vest in that branch, even in an advisory capacity, predominant authority with reference to taxation and finance. This commission was, in a sense, made the Building Committee, inasmuch as they would first consider any contemplated change in the plan of the building. During the same year a new building manager was appointed, who was the Honorable A. J. Maxwell. He was a man of outstanding ability who had rendered many years of valuable service to the State of North Carolina and who was considered a profound student of taxation and tax policy with progressive ideas respecting alterations or additions to the structure, necessary to keep pace with the rapidly changing times.

Sales Tax

The storm clouds of economic depression began to gather in the early thirties and this storm of insecurity reached its height during the time when the General Assembly of 1933 was still in session. Not only was our State tax structure unable to withstand the fury of the tempest, but it was also laying waste the local tax structures of cities and towns to the extent that it appeared that our public school system, then supported principally on a local level, might collapse unless some drastic change was made. Under the courageous leadership of Governor Ehringhaus the General Assembly met the issue squarely and in the face of bitter opposition passed the retail sales tax. North Carolina thus became the second state to levy such a tax, following the example of Mississippi. This tax is known as Schedule E, called Sales Tax, and a large room, comprising the third floor of our building, was added in 1933.

New Taxes After 1935

In 1935, with the licensing of wine and beer sales and the establishment of the A. B. C. Stores, a sales tax on

beverages was established called Schedule F or Beverage Tax and the third floor was then divided into two partitions; beverage and sales. In 1937, still additional rooms were added to the revenue structure. Schedule G for Gift Taxes was designed primarily as an underpinning or support for inheritance tax, known as Schedule A. A constitutional amendment having been ratified by the voters at the general election in 1936 authorizing the General Assembly to classify property for the purpose of taxation, the Intangibles Tax or Schedule H was also added to our building in 1937. These rooms were added by building an additional story to the existing structure. Two years later, in 1939, the General Assembly found that a portion of the second floor depicting the Sales Tax was sagging by reason of the purchase of taxable merchandise outside of the state for use and consumption in the state, and so they designed a steel beam known as Schedule I, or Use Tax, to go under that part of the second floor supporting Schedule E, or Sales Tax. However, at that time instead of adding anything further to the existing building the whole structure was torn down and rebuilt in a design similar to the original building, with its various additions and structural supports. At this time they built the building permanently and added another tax known as Schedule I-A, which is Insurance Tax, and figuratively placed a cornerstone in this building called "The Permanent Revenue Act of 1939."

$140 Million in Taxes

Viewing the building as a composite whole, I am of the opinion that it has been wisely planned in accordance with our needs; that the weight thereof is evenly distributed; that the design thereof is adapted to the economic balance in North Carolina, and that it has balance, symmetry and utility. This is only my view and yours may be entirely different. There are three significant things about this structure to which I would direct your attention: First, it remained practically unchanged for the 12 year period from 1921 to 1933, during which time it only had four different kinds of tax levies. Second, from 1933 to 1939, six new levies were added, or an average of one for each year during that period. Third, it has remained constant, for there has been no substantial change in the structure for more than ten years. I do not take the position that no changes should be made, but I am of the opinion that before such changes are made, it would be preferable to determine whether or not this structure is being used to its fullest capacity and properly maintained. In round figures the revenue values of these rooms in our building are as follows: Inheritance, 2 million; License, 4 million; Franchise, 11½ million; Corporation Income, 40½ million; Individual Income, 25 million; Sales, 40½ million; Beverage, 9 million; Intangibles, 3 million; Insurance, 4 million; adding up to a total of approximately 140 million dollars for the fiscal year ended June 30, 1949. Sales tax and corporate income tax are approximately the same in revenue dollar value, each having about 40½ million dollars each. Add to this the individual income tax of 25 million dollars and we have approximately 106 million of the 140 million dollars, or about ¾ of our general fund revenue derived from income and sales taxes, as compared with ¼ from all the other eight different kinds of taxes.

Mechanical Processing

The General Assembly of 1949 greatly increased appropriations, especially for public schools, but did not levy any new taxes. On the contrary, additional exemptions were added to our sales tax schedule, and the allowance for dependents increased in our income tax schedule. Facing this challenge, we in the Revenue Department have necessarily had to examine the administration of sales and income taxes and determine whether the state is deriving its fair share from these levies. In dealing with nearly a half-million income taxpayers, we promptly reached the conclusion that manual processing was too slow, tedious and expensive; that the intelligence and thinking power of our clerical workers was being diverted into mechanical processing, which a machine could do more accurately economically and efficiently. And so last October we installed a punched card accounting machine system which enables us to match the individual income tax returns filed by the taxpayer with "Information at the Source" that we have on file and have received from employers and other sources, and thus ferret out the delinquent taxpayer and nonfiler. In this system it is the punched card that is the Key that unlocks the large battery of machines called sorters, reproducers, interpreters, collators and tabulators and makes them sort cards, match cards, compute interest, discover errors, print name and address for mailing purposes and do many other things that one would hardly believe unless he saw the machines in action. For example, to show the contrast between manual and mechanized processing, it required from March 15, 1947 until November 28, 1949 to complete matching our 299,065 individual income tax returns filed by the taxpayers for 1946 with our "Information at the Source," which we had received from employers and other sources. The reason why so much time was required was because it required a clerical worker from two to five minutes to match one item and from one to two minutes to sort one item. The objective was all right but the system was too slow.

Although slow, tedious and costly, the manual process was valuable for by matching information against returns, we discovered many thousand nonfilers. As a result of our drive on the delinquents discovered by this method, we collected as of May 9, 1950, during a period of five months, the sum of $554,335.37 in income taxes from 22,653 delinquent income taxpayers. By contrast, our machine processing of the 1949 individual returns recently filed will be completed by about October 1, 1950, at which time our drive against delinquents will commence. As compared with 2 to 5 minutes per item on matching by hand, our electronic collator will match 480 cards or 240 items per minute. Similarly the sorting that required 1 to 2 minutes by hand can be done on a new high speed sorter that will sort those cards in any way we want, at the unbelievable speed of 650 per minute. We are hoping we will not have as many delinquents this year as formerly. Our records would indicate this inasmuch as we have filed 41,951 more individual income tax returns this year than last.

Audit Experiment

The mechanized system will greatly increase the efficiency of our income tax administration, but of course, will not eliminate audits. In our own audit procedure, we have added a number of additional auditors, but our most fortunate development in respect to audits is an agreement recently made with the Treasury Department in Washington for a complete interchange of audit information on all income tax adjustments made by our department or the Federal Bureau. This is an experiment being carried on with two states, North Carolina and Wisconsin having received the distinction of being selected for this purpose. This expansion of Federal-state cooperation

is the outgrowth of many negotiations and conferences between the Federal. state and local taxing authorities.

Sales Tax Enforcement

Development of a more efficient and equal enforcement of our sales tax schedule is a joint administrative and legislative problem. Sales tax policy is a matter for the General Assembly and I would not attempt to invade the province of the Legislature. However, I would be remiss in my duty as a tax administrator if I did not point out some of the problems I am constantly facing and trying to solve in connection with the hundreds of tax hearings held in my office. We have a maximum limitation of $15.00 sales tax on any single article of merchandise. Being the only state having such a provision, we can get no precedent or administrative assistance from our colleagues in the other 27 sales tax states. We are constantly called upon to interpret the meaning of "single article" and the contentions made by various taxpayers are a mixture of sincerity, carelessness, negligence, and absurdity. Another major problem in our sales tax administration is the exemption of approximately 32 different classes of merchandise, many of which exemptions are discriminatory since many competitive articles of merchandise are not so specifically exempted but are taxable under the law. These exemptions have confused many thousands of taxpayers and have caused the loss of many hundreds of thousands of dollars in tax assessments.

Administratively, we are doing everything possible to equally enforce the sales tax law. We have promulgated several regulations clarifying the liability of the sales tax in many transactions. We have added 90 to our field forces—auditors and deputies. The auditors have produced $16.80 in revenue for every dollar of salary and travel expense they have cost the state. Our deputies have undoubtedly been equally productive. For the past three months we have had an increase in collections of over $300,000 each month as compared with last year. We have endeavored to cooperate with organized groups to achieve a better mutual understanding of tax liability. But we must admit that the sales tax law as now written has many difficulties of effectual enforcement and its efficacy is seriously impaired by the single article limitation of tax and many of the exemptions.

In conclusion, I wish to point out that we know our revenue structure in North Carolina, as now constituted, is modern in comparison with some of our sister states. We know this because they have borrowed many of our provisions relating to tax policy and have adopted some of our methods in reference to tax enforcement. But being modern is insufficient unless the weight is properly balanced and the burden equitably distributed in proportion to benefits derived and ability to pay. We, in the Revenue Department, do not make tax laws or write tax bills but we are duty bound to enforce provisions enacted by your Legislature and mine. We are trying to do that in order to be able to say to the Finance Committee or the Advisory Budget Commission that we are convinced to a moral certainty that we are collecting all of the revenue which might be reasonably expected from a certain type of levy. Our only possible hope of attaining this is through equality of enforcement. In other words, equal enforcement will not only produce the revenue but will also prove the wisdom, or lack of it, in any tax levy. Again reverting to our analogy: equality of enforcement will not only provide a solid foundation for a successful tax administration, but also a suitable cornerstone for a wise tax policy.

Books Received

Federal Services to Cities and Towns

The federal government offers a veritable host of services to city and county officials, ranging all the way from technical advice on abbatoirs to information on good zoo administration. The average local official is aware that government agencies render such services to cities and counties, but it is often difficult for him to find out which one is interested in his particular problem.

A recent publication of the American Municipal Association is designed to help remedy this situation. It is entitled "Federal Services to Cities and Towns," and is sub-titled "An Alphabetical Listing of Services of the United States to Cities, Towns, Boroughs, and Villages, and To Counties and Other Local Governments." (By Hanks and Blundred of the American Municipal Association, 1313 East 60th Street, Chicago 3, Illinois—$5).

The range of services which federal agencies are now rendering to local governments is impressively wide. If a municipality wants to make a housing vacancy survey, the Post Office Department will authorize its foot postmen to assist in determining the number and ratio of housing vacancies in the city. If the community is short of doctors or dentists, the Extension Service of the Department of Agriculture will assist in bringing them to the community. Technical advice and information on methods of regulation of dust and fumes in combating air pollution is available from the Bureau of Mines, Department of the Interior. Street lighting advice may be had from the National Bureau of Standards and reports on street planning and construction research is available from the Bureau of Public Roads—both agencies being part of the Department of Commerce.

The Forest Service of the Department of Agriculture will undertake continued maintenance of forest lands and watersheds donated to it by a municipality, or will contract with a municipality for fire protection service on watersheds and municipal forests.

The Community Facilities Service of the General Services Administration will supply information on loans for municipal public works planning and engineering, along with technical assistance.

The 81-page booklet summarizes several hundred services—including grants, loans, and technical assistance and information services—available today from the federal government's many agencies. It also gives the addresses of national and field offices of these agencies.

Recent Supreme Court Decisions

By

W. M. COCHRANE

Assistant Director

Institute of Government

The Supreme Court of North Carolina has recently:

Held *that one who knowingly transports in his automobile more than one gallon of alcoholic beverages is guilty of "unlawful transportation," even when the automobile contains not more than one gallon per passenger.*

In *State v. Welch*, 232 N. C. 77 (filed 10 May 1950), the Supreme Court settled the "gallon law" question which had plagued law enforcement officers countless times since passage of the Alcoholic Beverage Control Act in 1937. The lower courts had decided the question both ways in different parts of the state during this period, in fact in situations similar to the facts in this case.

The defendant here was driving his automobile from Charlotte to Monroe, and his wife was sitting beside him on the front seat. Charlotte is in Mecklenburg County, which operates liquor stores under the ABC Act of 1937; Monroe is in Union County, which is a "dry" county. The defendant was stopped at a point in Union County by State highway patrolmen, who discovered two packages in the automobile, each containing one gallon of tax-paid liquor. One package was in the manual custody of defendant's wife; the other was on the floor behind the front seat. The defendant testified that he and his wife resided at different places in Monroe; that the one-gallon package on the floor was his, and that he had purchased it at a liquor store in Charlotte for his personal consumption; that the one-gallon package in his wife's custody was hers, and that she had purchased it at a liquor store in Charlotte for her personal consumption; and that he did not know her package contained liquor until it was opened by the patrolmen.

The defendant was charged with unlawfully transporting intoxicating liquor in a quantity in excess of one gallon in violation of the Turlington Act of 1923 as modified by the ABC Act of 1937. The trial court judge directed the jury to convict if it found beyond reasonable doubt "that the defendant knowingly transported two gallons of alcoholic beverages, even though one gallon of such beverages may have belonged to his wife."

Among the several questions presented by the defendant on appeal to the Supreme Court, none is of such general interest as his contention "that the statutes permit the driver of an automobile to carry or convey more than one gallon of alcoholic beverages in his automobile if he is accompanied by others, and if the maximum quantity of alcoholic beverages owned or possessed by any one occupant of the automobile does not exceed one gallon." In affirming the judgment of the trial court against the defendant, the Supreme Court dismissed this argument, saying that "the statutes under review express in clear and unambiguous language the definite legislative intent to prohibit the transportation of more than one gallon of alcoholic beverages under any circumstances by any person" other than one engaged in making deliveries to an ABC store.

Held *that a municipality has no authority to waive its immunity from tort liability in performance of its governmental functions.*

In *Stephenson v. Raleigh*, 232 N. C. 42 (filed 3 May 1950), plaintiff's intestate was killed when the motor scooter on which he was riding collided with a garbage truck being used by city employees for collecting and removing prunings from shrubbery and trees from the homes of citizens of Raleigh. Plaintiff brought a civil action to recover damages from the city, alleging that the death of her intestate resulted from the negligence of defendant city's employees. Plaintiff in her complaint conceded that the city was obligated by law to collect and remove the prunings; that in performing this operation the city was exercising a governmental function; and that a municipality is not ordinarily liable for damages caused by the negligence of its employees when it is exercising a governmental function. But plaintiff maintained "that even though the defendant, City of Raleigh, may be immune from liability in actions such as this, the defendant . . . could waive its immunity in the event the defendant . . . . procured indemnity from liability which might arise by reason of such waiver." The plaintiff contended that the city had a public liability insurance policy under which the city could waive its immunity without loss to the city, by virtue of the following language in the policy: "[the insurance company] . . . will not . . . . claim exemption from liability to the named insured because of any statute, ordinance or other legal restrictions, whereby the named insured shall, by reason of its being a municipal corporation, be legally exempt from liability for damage, and that in all cases of loss or damage, settlement shall be made as herein provided the same as though the named assured were a private corporation."

The trial court overruled defendant's demurrer to the complaint, and denied defendant's motion to strike out as irrevelant plaintiff's references to the insurance contract. The Supreme Court reversed this judgment. The Court cited a few of the numerous North Carolina decisions holding that a city may be liable for negligent acts of its officers and agents when it is acting in its corporate character, but is not liable (in the absence of a statute imposing liability) when acting in the exercise of police power, or judicial, discretionary, or legislative authority, conferred by its charter or by statute, and when discharging a duty imposed solely for the public benefit. Then the Court turned to the question whether the city had waived its immunity to tort liability, under the terms of the insurance contract, the answer here depending on whether the city had power and authority to do so. Pointing to the legislature's declaration in G.S. 160-1 that every city or town "shall have the powers prescribed by statute, and those necessarily implied by law, and no other," the Court said, ". . . we know of no statute . . . that empowers any city, town, or other municipality to waive immunity to tort liability, directly or indirectly."

Finally, the Court held that the quotations from the city's insurance contract, relied on by plaintiff, should have been stricken from her complaint as contended for by defendant. Saying that the liability policy

protected only the insured, the city of Raleigh, and that it "does not purport to create liability to anyone who may suffer tortious injury as result of acts of officers, agents, or employees of the city in the performance of governmental functions. . . ," the Court agreed with defendant that allegations involving the terms of the contract were immaterial and irrelevant to the cause of action "attempted to be alleged in the complaint."

The Attorney General Rules

Digest of recent opinions and rulings by the Attorney General of particular interest to city and county officials.

Prepared by the Staff of the Institute of Government

Criminal Law

Intoxicating Liquor—Possession of More Than One Gallon in the Home. Disregarding entirely the question of possession for purpose of sale, is there any statutory reason why a person may not legally possess in his own home, for his own use and for the use of his *bona fide* guests, quantity of legally acquired tax-paid liquor in excess of one gallon?

To: E. Earle Rives

(A.G.) G.S. 18-49 and G.S. 18-58 permit one to possess and transport tax-paid liquor in a quantity not exceeding one gallon, when it was purchased at an ABC store or was legally acquired outside the state. I am speaking, of course, of possessing and transporting such liquor from a permissible place, such as an ABC county, into a so-called "dry" county. The Supreme Court first construed and applied these permissive statutes, as related to a county operating under the Turlington Act, in *State v. Sudderth*, 223 N. C. 610. See *State v. Barnhardt*, 230 N. C. 223; *State v. Holbrook*, 228 N. C. 582; *State v. Wilson*, 227 N. C. 43.

I have examined all the cases I consider pertinent, and cannot find any case that leads me to believe that the mere possession of tax-paid liquor in excess of one gallon by an individual in his own home for his own use and the use of his *bona fide* guests is a criminal offense within itself. All of the cases I have found relate the possession of more than one gallon to the presumption that it was possessed for purpose of sale. The excess quantity always seems to be related to an offense other than possession, that is, the sale of liquor. And the excess quantity always seems to be translated into a matter of evidence, that is, a *prima facie* case or the legal presumption as related to sale.

I am of the opinion, therefore, that disregarding the question of possession for the purpose of sale, the mere possession of tax-paid liquor in excess of one gallon in the home for an individual's own use or the use of his *bona fide* guests is not a criminal offense.

Attempted Suicide. Is it unlawful in this state for a person to attempt to commit suicide?

To: L. T. Rollins

(A.G.) At the common law it was a misdemeanor to attempt to commit suicide. Under G.S. 4-1 the common law is declared to be in force in this state except where it is modified by statute or where it has been held by the Supreme Court to be obsolete. North Carolina has no statute modifying the common law in this respect, and I have not been able to find any decision of the Court on the subject. I frankly cannot tell you whether the Court would hold an attempt to commit suicide to be a crime or not, but I think you would be warranted in proceeding on the assumption that the common law is in force and in bringing an indictment if you thought it proper.

Breaking into Funeral Procession. Is it unlawful in this state for a person to break into a funeral procession?

To: L. T. Rollins

(A.G.) There is no North Carolina statute specifically making it unlawful for a person to drive his car into a funeral procession. Indictments on this subject have usually been framed under the statute on reckless driving (G.S. 20-140) or grounded upon some violation of speed restrictions contained in G.S. 20-141. I think it is a matter of how the person was operating his vehicle, its speed, and whether he was operating without regard for the rights and safety of others, and without due caution.

Elections

Municipal Referendum on Sunday Movies. In recent years there has been a noticeable tendency on the part of municipal governing boards to refer the Sunday movie question to the voters whenever it comes up. Is such a referendum legal?

To: H. L. Fagge

(A.G.) There is no statute which permits such elections to be held in municipalities in this state, and therefore any referendum which is held will be on a voluntary basis without legal authority. The town board is not authorized to expend any public funds for this purpose. If the board wishes to obtain an expression of the sentiments of the people in the town on the question, and if the expense of holding the election is provided by other funds than public funds, such a referendum could of course be conducted. If the board wished to have a legal referendum on the subject, it would be necessary to have legislation authorizing it to be held.

License Taxes

Transfer of License. Municipalities levy license taxes on "trades, professions and franchises" under authority of G.S. 160-56, subject to limitations "otherwise provided by law." The state levies privilege license taxes under authority of Article 2 of G.S. Ch. 160, known as Schedule B of the Revenue Act, which also provides limitations on the license taxing power of municipalities. Schedule B licenses issued by the state are transferable when a business is sold to a new owner, with certain specific exceptions designated in G.S. 105-33(c). Are municipal privilege licenses similarly transferable?

To: W. Y. Wilkins, Jr.

(A.G.) State licenses are transferable only because of the express provisions of G.S. 105-33(c), which does not apply to municipalities. In my opinion a municipality would not exceed the maximum levies authorized by the various sections of the Revenue Act if it imposed the maximum tax upon each person, firm, or corporation which, during the tax year, engaged in the particular business or activity, even though the business was sold to new owners by the owners who had paid the license tax. I am of the opinion that whether privilege licenses are transferable to successors is therefore to be governed by the municipality's taxing ordinance itself, and that in the absence of an express ordinance provision permitting transfer, a new owner would have to purchase the proper new licenses in order to entitle himself to conduct a business subject to the municipal privilege license tax.

Property Taxes

Situs of Tangible Personal Property for Taxation. As a general rule tangible personal property must be listed for taxation at the residence of the owner under G.S. 105-302 (1). If the owner is a partnership, corporation, or unincorporated association, the owner's residence is deemed to be the place of its principal office. Suppose, however, that a partnership engaged in the trucking business maintains its main office in County A and maintains a storage place in County B at which its trucks are based, stored, and serviced. Should all tangible personal property of the partnership, including its trucks, be listed in County A?

To: J. Pate Fulk

(A.G.) While the general rule stated above is correct, G.S. 105-302 (4) provides that tangible personal property is to be listed where *situated* and not at the owner's residence if the owner hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, *place for storage*, manufactory or warehouse other than at his residence "for use in connection with such property." Since this trucking company maintains a place for storage in County B, and in connection with that garage, uses trucks based and serviced there, the trucks should be listed for taxes in County B. Other property of the firm such as office furniture and fixtures kept in County A, as well as other items not used in connection with the storage garage, should be listed in County A.

Taxation of Property in Receivership—Duty to List; Power to Levy. When a corporation is placed in receivership under state law certain questions concerning local property taxation are raised. Must the receiver list the corporate property for taxes? If he fails to do so, what recourse is open to the tax authorities? Must the receiver pay taxes assessed against such property? If he fails to pay the taxes, may the taxing unit collect by levy on personal property in the receiver's hands?

To: Robert E. Bencini, Jr.

(A.G.) The normal order appointing a receiver, for a corporation, enjoins the officials of the company from interfering with the receiver's duties and places all assets of the corporation in the receiver's hands. Thus the officers could not, without violating the injunction, list the property for taxes. Yet all taxable property must be listed in accordance with ownership as of January 1st each year under G.S. 105-280. Thus if the assets are in the receiver's hands at tax listing time, and inasmuch as he succeeds to all the right, title and interest of the corporation in the property, it becomes his duty to list it. Should he fail to do so the county tax authorities are empowered to list it under G.S. 105-331. In either case, the receiver is required by G.S. 105-412 to pay the taxes out of the assets of the estate in his hands, and such taxes (together with interest, penalties and costs) are made a preferred claim in the receivership second only to administration expenses and specific liens by G.S. 105-376(d). Should the receiver fail to pay such taxes, G.S. 105-385(c) empowers the tax authorities to levy on personal property in his hands without applying for an order of court directing payment or authorizing the levy. If the personal property is sold before levy is made, the taxing unit is entitled to a preference in the distribution of the assets in accordance with G.S. 105-376(d).

PEYTON B. ABBOTT

Assistant Attorney General

Payment of Taxes on Land Sold Under Order of Court or Under a Power of Sale. In civil actions and special proceedings in which sale of real estate is ordered the judgment must provide for payment of all taxes "then assessed upon the property and remaining unpaid," and in cases in which persons sell land under a power they must pay from the sale proceeds all taxes "then assessed upon such real estate." See G.S. 105-408. Suppose, for example, that the sale is held between January 1 (listing date) and July 1 (the first of the new fiscal year), does the person making the sale have to pay the "current" taxes, or may he make the sale "subject to current taxes?"

To: Nat S. Crews

(A.G.) "Current taxes" are taxes levied and assessed in the current fiscal year. For example, up until June 30, 1950, current taxes are 1949 taxes, that is, the taxes which became due on the first Monday in October, 1949. Thus the person making a sale of the kind referred to above between January 1, 1950, and June 30, 1950, would have to pay 1949 taxes, as well as those for prior years, from the proceeds. "Current taxes" are sometimes loosely interpreted to mean those to be levied later in the calendar year after the sale is held. Such taxes are not "then assessed" at the time of the sale as the term is used in G.S. 105-408. For purposes of that statute, a tax is not assessed until the governing body fixes the tax rate. The assessing that takes place in the January listing period is not assessment of the tax against the property; it is merely the assessment of the valuation of the property for the purpose of taxation. No taxes are assessed until the tax rate is at least tentatively set, and in my opinion, even this tentative tax rate for purposes of prepayment calculations does not constitute a tax assessment. Setting the final tax rate is the act of assessment of taxes. If the term "current taxes" is used to describe those assessed later in the calendar year for the next fiscal year, the person selling land under order of court or under a power between January 1 and July 1 does not have to pay them out of the proceeds. In such cases, he would be justified in advertising the sale "subject to" the taxes which will be assessed later in that calendar year for the coming fiscal year.

T. WADE BRUTON

Assistant Attorney General

Street Paving

Paving Streets with Private Funds. Suppose that certain industries in a city were willing to deposit funds with the city to cover the entire cost of a street paving project, under an agreement whereby the city would proceed with paving as provided in the General Statutes, using the funds so deposited to pay for the job, and would then collect the paving assessments together with interest thereon, the same to be remitted to the parties putting up the deposits. Would such a plan be legal?

To: John D. Shaw

(A.G.) It is my opinion that any plan which calls for the use by a city of funds placed with it by private parties would amount to a borrowing of such funds, and would come within the provisions of G.S. 160-99, relating to short term financing in connection with local improvements. I do not believe such a plan could be followed without complying with the provisions of the Local Government Act affecting such financing, including G.S. 159-6, which provides for approval of notes of less than six months' duration by the Local Government Commission's Executive Committee, and G.S. 159-13, which has a proviso for private sale on five days' notice of such short term temporary notes.

Paving Streets with School Funds. A town school board wants to know whether it can use certain school funds—state school funds, county school funds, district school funds, district supplementary tax school funds, and a special school fund collected in a drive from the pockets of citizens for teachers' salary increases—in combination with road funds from other sources on a matching basis to pave a public road that runs beside the school property.

To: J. A. Batson

(A.G.) Although this office has ruled that school property is subject to paving assessments in connection with improvement of streets and sidewalks abutting property, I seriously doubt that the school board has authority to use school funds for street paving under the circumstances you describe. I think it would be necessary for the tax levying authorities to approve expenditure of school funds for such a purpose. As you know, your authority is limited to using school funds for the purposes set up in the budget. If use of school funds for paving purposes is contemplated, a supplementary budget should be filed with the tax levying authorities for their approval or disapproval.

Petitions for Street Improvements. Is it necessary for a majority of the abutting property owners on a street to sign a petition for improvements before a municipality can make the improvements? Do the municipal governing authorities have power to provide for improvement of only a portion of a street if the necessary property owners join in the petition?

To: Staton P. Williams

(A.G.) Your first question is answered by G.S. 160-82, which requires that "at least a majority in number" of the abutting owners must join in the petition. It is therefore my opinion that more than 50 per cent of them must sign it.

As to your second question, you will note that G.S. 160-82 refers to a "part of a street or streets proposed to be improved." In *Waxhaw v. R. R.*, 195 N. C. 551, the Court, in discussing this statute where a similar question has arisen, said that the section "in express terms permits the authorities of the town to lay a hard surface on a part of a street as well as on the whole, and that there is nothing in the statute indicating that 'the part thereof' necessarily excludes a lateral pavement and applies only to a cross section."

While the question in that case was whether an assessment was valid when only one side of the street was to be improved, it is my opinion that the interpretation given the statute by the Court in that case would apply to your question, and that a part of the street could be improved if a majority of the persons owning property and representing a majority of the lineal frontage abutting on the portion that is to be improved signed the petition.

Clerk Of Superior Court

Duty to Record Election Returns. Is the clerk of Superior Court required to record in the record books the original abstracts of election returns filed with him by election officials?

To: J. E. Swain

(A.G.) G.S. 163-88 provides that the original abstracts of election returns shall be signed and certified correct by the members of the county board of elections and, together with the original precinct return, shall be "filed with the clerk of the superior court to be recorded in the permanent file in his office."

In most counties the Superior Court clerks copy the election returns in books provided for that purpose. It will be observed that the statute employs both the word "filed" and the word "recorded." This indicates to me that it was the legislative intent to require that the records not only be filed but that they be recorded, that is, copied in the "proper books." If this were not true, I think the legislature would have provided that the returns be filed with the clerk and docketed as a part of his permanent files.

The section dealing with the duty of the Secretary of State requires that the abstracts filed with him are to be recorded in a book kept for that purpose. It occurs to me that it is just as important to preserve the election returns as to county officers as it is to state officers.

I do not know of any case in which our Supreme Court has passed on this question, but it seems to me that it is best to resolve the doubt in favor of recording, in books kept for that purpose, the election returns filed with the clerk.

Appointment of Guardian for Insane Person. G.S. 35-3 provides that in cases where a person is confined in a hospital or asylum for the insane, the certificate of "the superintendent of such hospital declaring such person to be of insane mind and memory" shall be sufficient evidence to authorize the clerk of Superior Court to appoint a guardian for such person. Would a certificate executed by the assistant medical director of such hospital be sufficient authority for the clerk to appoint a guardian, in a case where the hospital had no superintendent?

To: George W. Fletcher

(A.G.) In my opinion the word "superintendent" as used here does not confine the authority to execute the certificate to the person bearing such title, but is intended instead to describe the character of the person who is required to execute the certificate in terms of the duties of such person. "Superintendent" has been held to be synonymous with "manager" (cited authorities). If the hospital designates as "medical director" the one to whom it has entrusted its general management, it is my opinion the statute would be complied with if the medical director executed the certificate, as he, in fact, occupies the position of superintendent. However, I do not think that the statute authorizes execution by the assistant superintendent, or assistant manager, or assistant medical director.

Fines And Forfeitures

Use of Proceeds. May a portion of the expense of a recorder's court clerk's salary legally be charged against the fines collected in the court?

To: J. L. Womack

(A.G.) I am of the opinion that this cannot be done. Article IX, § 5, of the Constitution requires that the clear proceeds of all fines and forfeitures be paid into the school fund of the county in which they are collected. *State v. Maultsby*, 139 N. C. 583; *Board of Education v. High Point*, 213 N. C. 636; *Board of Education v. Henderson*, 126 N. C. 689.

Double Office Holding

Mayor of One Town Serving as Attorney for Another. Does the constitutional prohibition against double office-holding (Art. XIV, § 7, N. C. Const.) prevent the mayor of one municipality from serving as the attorney for another?

To: Randy Haskell Hamilton

(A.G.) In my opinion the position of town attorney is one of employment rather than of public office, and I see no legal reason why one person might not serve as mayor of one town while serving as attorney for another town.

Health

Qualifications of Health Officer. On numerous occasions physicians have been employed, both locally and statewide, as health officers, and have assumed their duties prior to obtaining a license from the State Board of Medical Examiners. Is such a physician considered as being engaged in the practice of medicine under the terms of the state's Medical Practice Act?

To: Dr. Ivan Proctor

(A.G.) Any physician engaging in any of the acts set forth in G.S. 90-18 would be practicing medicine, and would, of course, have to have a license in this state as required by the Medical Practice Act. The fact that a physician is working with the State Board of Health or is a county health officer does not in any way alter the situation. If physicians from other states are employed as health officers, and if they diagnose, or attempt to diagnose, or treat, or attempt to treat, etc., in accordance with G.S. 90-18, then, in my opinion, they are practicing medicine without a license.

It may be that in some cases such physicians are engaged in purely administrative work, in which case they would not be practicing medicine without a license.

Some of the faculty, staff and Association officers. Front row, left to right: R. H. Teeter, Duke Power Co., Board of Examiners; F. H. Pauszek, U. S. Geological Survey; J. G. Smith, Jr., Wilson, Vice President; Dr. H. G. Baity, Head of Department of Sanitary Engineering, U. N. C.; Dr. A. P. Black, Head of Department of Chemistry, University of Florida; Stanford Harris, Winston-Salem, President; W. W. Adkins, Asheboro, Board of Examiners; G. R. Reynolds, Leaksville, Secretary. Back row, left to right: J. H. Henderlite, Wallace and Tiernan Co.; R. S. Phillips, Charlotte, past president; John Andrews, Raleigh; R. H. Culver, N. C. State College; Clifford Pace, Assistant Director, Institute of Government; Dr. Brewster Snow, Duke University; Dr. Emil Chanlett, Dept. of Sanitary Engineering, U. N. C.; W. C. Gibson, School of Public Health, U. N. C.

A Laboratory Session.

Obviously, the Barbecue Session.

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JUNE 5-9

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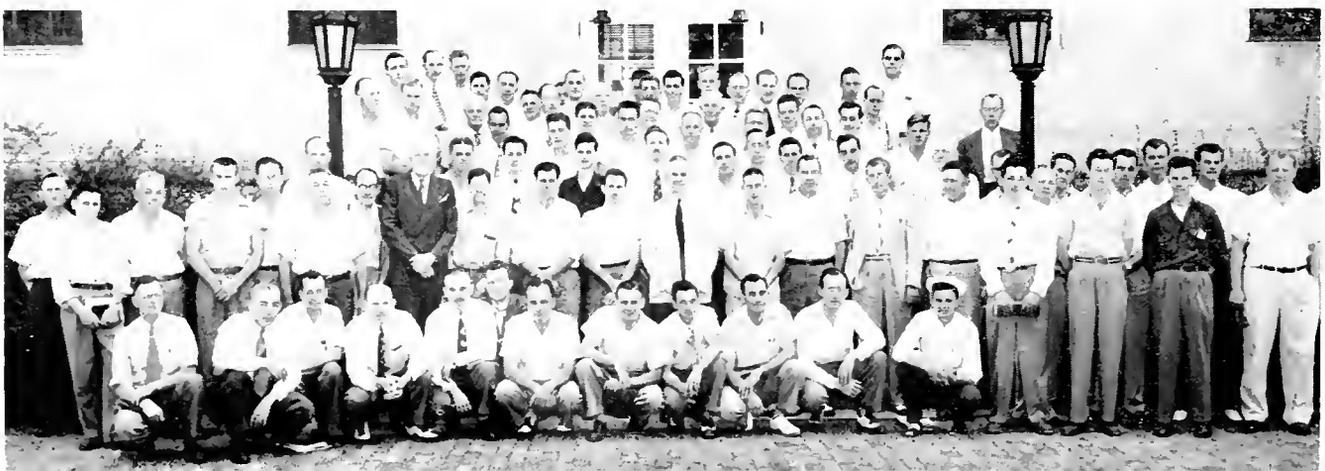

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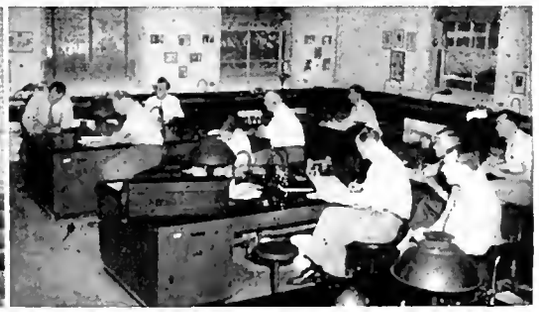

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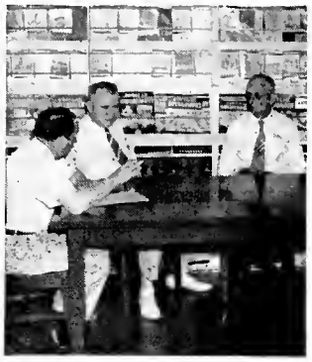
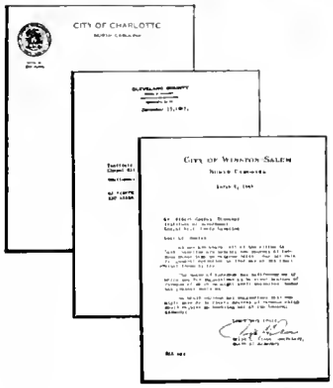
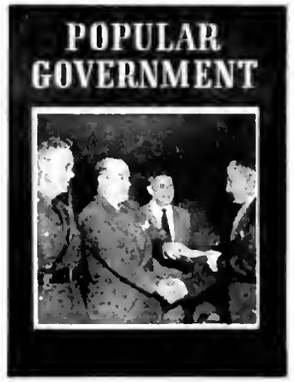


Consultation

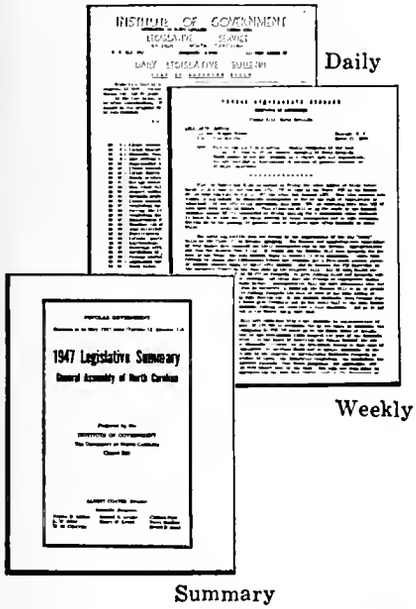


Inquiries



Monthly Magazine

Legislative Service

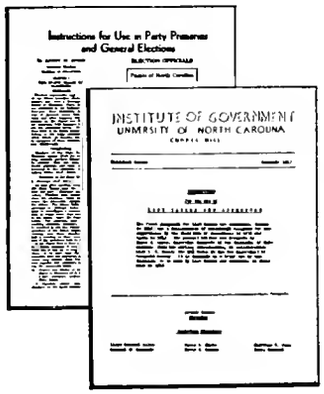


Daily

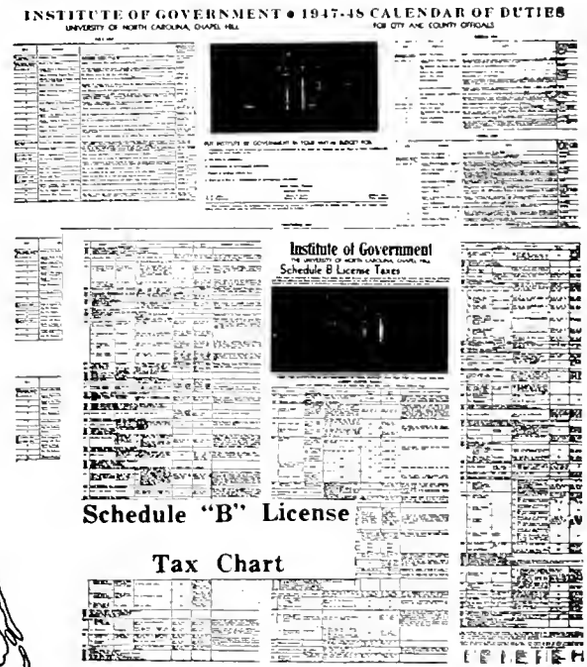
Weekly

Summary

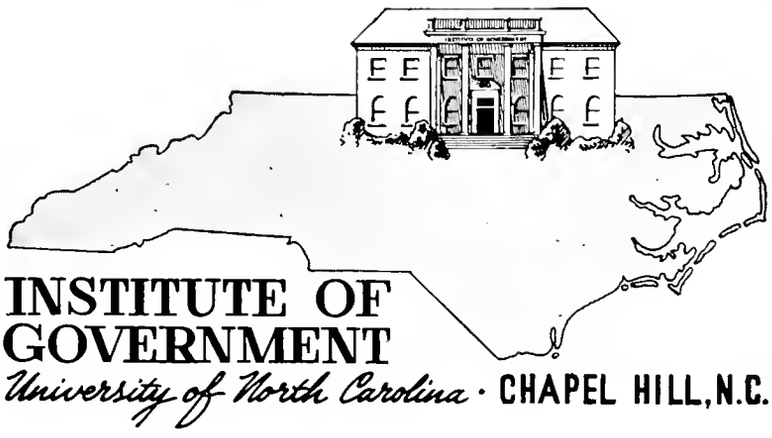
Guidebooks



Calendar of Duties



Schedule "B" License Tax Chart



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